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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

S2 13 Cr. 0478 (JGK)

5 HARRY CASTRO,

6 Defendant.

7 -----x

8
9 December 4, 2013
5:06 a.m.

10 Before:

11 HON. JOHN G. KOELTL,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BY: DAMIAN WILLIAMS

Assistant United States Attorney

18 FEDERAL DEFENDERS OF NEW YORK INC.

Attorneys for Defendant

19 BY: PEGGY CROSS-GOLDENBERG

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1 THE CLERK: United States of America versus Harry
2 Castro.

3 All parties, please states who they are for the
4 record.

5 MR. WILLIAMS: Good afternoon, your Honor. Damian
6 Williams for the government.

7 THE COURT: Good afternoon.

8 MS. CROSS-GOLDENBERG: And the Federal Defenders of
9 New York by Peggy Cross-Goldenberg for Mr. Castro.

10 Good afternoon, your Honor.

11 THE COURT: Good afternoon.

12 I understand that the defendant has an application.

13 MS. CROSS-GOLDENBERG: Yes, your Honor.

14 A Superseding Indictment has been filed in this case.
15 He has not actually been arraigned on that indictment, but we
16 have reached an agreement by which the government will accept a
17 plea to a lesser included charge. Mr. Castro is prepared to
18 plead guilty to that lesser included charge at this time.

19 So I don't know if the Court actually wants to arraign
20 him first or if he can just enter the plea of guilty to the
21 lesser included charge.

22 THE COURT: What I would like to do -- what I usually
23 do, if the parties agree, is I would incorporate the
24 arraignment on the Superseding Indictment together with the
25 allocution on the guilty plea. And that has always made more

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1 sense to me because somehow it doesn't seem quite right to me
2 to simply arraign the defendant on a Superseding Indictment and
3 receive a plea of not guilty and then move to an allocution on
4 a guilty plea, particularly when the allocution on the guilty
5 plea goes through all of the questions to make sure that the
6 defendant is competent to plead, and he has done that after he
7 has just entered a plea of not guilty on the Superseding
8 Indictment.

9 So it makes more sense to incorporate the arraignment
10 on the Superseding Indictment together with the allocution on a
11 guilty plea to the Superseding Indictment, if the parties agree
12 with that.

13 MS. CROSS-GOLDENBERG: Yes, I indeed do, your Honor.
14 In fact, I describe the other procedure as the kind of thing
15 that gives lawyers a bad name because it doesn't make sense to
16 me either. So I think the government is OK with that process
17 also.

18 THE COURT: Is that OK?

19 MR. WILLIAMS: Yes, your Honor.

20 THE COURT: All right. And the plea is pursuant to a
21 plea agreement, right?

22 MS. CROSS-GOLDENBERG: That's correct, your Honor.

23 THE COURT: I have a November 26, 2013 letter from the
24 government to you, Ms. Cross-Goldenberg. It's signed by
25 Mr. Williams and Ms. Dabbs. It appears to be signed by

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1 Mr. Castro and yourself on December 4th of 2013. The letter is
2 dated November 26, 2013.

3 Is that the plea agreement?

4 MS. CROSS-GOLDENBERG: Yes, your Honor.

5 THE COURT: OK. I have marked that as Court Exhibit
6 1.

7 Mr. Fletcher, please administer the oath to the
8 defendant.

9 THE CLERK: Counsel has asked that the defendant can
10 be seated for medical reasons.

11 THE COURT: Fine. The defendant can be seated.

12 MS. CROSS-GOLDENBERG: Thank you, your Honor.

13 (The defendant was sworn)

14 THE CLERK: Please state your name for the record.

15 THE DEFENDANT: Harry Castro.

16 THE COURT: You can be seated.

17 THE DEFENDANT: Thank you.

18 THE COURT: Mr. Castro, do you understand that you are
19 now under oath and that if you answer any of my questions
20 falsely, your false or untrue answers may later be used against
21 you in another prosecution for perjury or making a false
22 statement?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Tell me your full name, please.

25 THE DEFENDANT: My name is Harry Castro.

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1 THE COURT: How old are you?

2 THE DEFENDANT: 59.

3 THE COURT: How far did you go in school?

4 THE DEFENDANT: I have a bachelor's degree.

5 THE COURT: Are you a citizen of the United States?

6 THE DEFENDANT: Yes, I am.

7 THE COURT: Are you able to speak and understand
8 English?

9 THE DEFENDANT: Yes. Yes, I am.

10 THE COURT: Are you now or have you recently been
11 under the care of a doctor or a psychiatrist?

12 THE DEFENDANT: Yes, I have.

13 THE COURT: Tell me about that, please.

14 THE DEFENDANT: Well, I'm currently in treatment for
15 depression and anxiety and attention deficit disorder.

16 THE COURT: All right. Is there anything about those
17 conditions that interferes with your ability to understand
18 these proceedings and to consult with your lawyer?

19 THE DEFENDANT: No, there is not.

20 THE COURT: Do you take medication for those
21 conditions?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: What kind of medication do you take?

24 THE DEFENDANT: Antianxiety pills, antidepressants,
25 and also for attention deficit disorder, I also take medication

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1 for that as well. I believe my attorney has a list of the
2 medications.

3 MS. CROSS-GOLDENBERG: I do have a list of his
4 medications, your Honor, I can hand up to the Court.

5 Mr. Castro also suffers from some physical ailments.
6 I don't know if the Court wants to inquire about those but --

7 THE COURT: Sure. What physical ailments?

8 And you can then read me the medications after
9 Mr. Castro goes through the physical conditions also for which
10 he sees a doctor.

11 THE DEFENDANT: Well, I suffer from cancer, prostate
12 cancer. I have been undergoing treatment for that, as well as
13 AIDS-related conditions.

14 THE COURT: OK. Thank you. Is there anything about
15 those conditions that interferes with your ability to
16 understand these proceedings and consult with your lawyer?

17 THE DEFENDANT: Not at this time.

18 THE COURT: OK. And, Ms. Cross-Goldenberg, you said
19 you have a list of the defendant's medications. Do you want to
20 read them for the record?

21 MS. CROSS-GOLDENBERG: Sure, your Honor. If the Court
22 would like, I provided a list to the court reporter so he will
23 have the spelling, and to the government.

24 But his medications are Lorazepam, Ritalin, Norvir,
25 Reyataz, Truvada, Risperdal, Zovirax and Celexa. There may be

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1 a couple of others that he doesn't take on a regular basis, but
2 we have discussed whether any of them affect his ability to
3 understand and follow these proceedings and they do not.

4 THE COURT: Is that right, Mr. Castro?

5 THE DEFENDANT: Yes, it is.

6 THE COURT: So there is nothing about any of those
7 medications that interferes with your ability to understand
8 these proceedings and to consult with your lawyer, is that
9 correct?

10 THE DEFENDANT: Correct.

11 THE COURT: All right. Have you ever been treated or
12 hospitalized for any mental illness or any type of addiction,
13 including drug or alcohol addiction?

14 You've seen a doctor, I appreciate, for depression and
15 ADD.

16 THE DEFENDANT: No, I haven't.

17 THE COURT: Other than that, have you ever been
18 treated or hospitalized for any mental illness or any type of
19 addiction, including drug or alcohol addiction?

20 THE DEFENDANT: No, I have not.

21 THE COURT: OK. Now, in the past 24 hours, have you
22 taken any drugs, medicine or pills, or have you drunk any
23 alcohol?

24 THE DEFENDANT: Yes, I have.

25 THE COURT: Is it some of the medication that you have

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1 described to me?

2 THE DEFENDANT: That is right.

3 THE COURT: Is there anything about that medication
4 that interferes with your ability to understand these
5 proceedings or to consult with your lawyer?

6 THE DEFENDANT: No, there aren't.

7 THE COURT: Is your mind clear today?

8 THE DEFENDANT: Yes.

9 THE COURT: Are you feeling all right today?

10 THE DEFENDANT: Yes.

11 THE COURT: Do either counsel have any doubt as to the
12 defendant's competence to waive indictment, agree to proceed by
13 information -- I'm sorry.

14 Do either counsel have any doubt as to the defendant's
15 competence to plead at this time?

16 MR. WILLIAMS: No, your Honor.

17 MS. CROSS-GOLDENBERG: No, your Honor.

18 THE COURT: All right. Mr. Castro,
19 Ms. Cross-Goldenberg has informed me that you wish to enter a
20 plea of guilty to the Superseding Indictment. Is that what you
21 wish to do?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Have you had a full opportunity to discuss
24 your case with Ms. Cross-Goldenberg and to discuss the
25 consequences of entering a plea of guilty?

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1 THE DEFENDANT: Yes, I have.

2 THE COURT: Are you satisfied with
3 Ms. Cross-Goldenberg and her representation of you?

4 THE DEFENDANT: Yes, I am.

5 THE COURT: On the basis of Mr. Castro's responses to
6 my questions and my observations of his demeanor, I find that
7 he is fully competent to enter an informed plea at this time.

8 Now, Mr. Castro, before I accept any plea from you,
9 I'm going to be asking you various questions. My questions are
10 intended to satisfy me that you wish to plead guilty because
11 you are in fact guilty and that you fully understand the
12 consequences of your plea and, furthermore, that you are
13 pleading guilty knowingly and voluntarily and that there is an
14 independent basis in fact for your plea.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: I am now going to describe to you certain
18 rights that you have under the Constitution and laws of the
19 United States which rights you will be giving up if you enter a
20 plea of guilty. Please listen to me very carefully. If there
21 is anything that I say that you don't understand, please ask me
22 to stop. Either I or Ms. Cross-Goldenberg will explain it to
23 you more fully. All right?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Now, Mr. Castro, under the Constitution

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1 and laws of the United States, you have a right to a speedy and
2 public trial by a jury on the charges against you which are
3 contained in the Superseding Indictment.

4 Do you understand that?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: If there were a trial, you would be
7 presumed to be innocent, and the government would be required
8 to prove you guilty by competent evidence and beyond a
9 reasonable doubt. You would not have to prove that you were
10 innocent at trial.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: If there were a trial, a jury composed of
14 12 people selected from this district would have to agree
15 unanimously that you were guilty.

16 Do you understand that?

17 THE DEFENDANT: Yes, I do, your Honor.

18 THE COURT: If there were a trial, you would have the
19 right to be represented by a lawyer, and if you could not
20 afford a lawyer, a lawyer would be provided to you free of
21 cost.

22 Do you understand that?

23 THE DEFENDANT: Yes, I do, your Honor.

24 THE COURT: In fact, Mr. Castro, you have a right to
25 be represented by a lawyer at trial and at every other stage of

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1 the proceedings, and if you cannot afford a lawyer, a lawyer
2 would be provided to you free of cost.

3 Do you understand that?

4 THE DEFENDANT: Yes, I do, your Honor.

5 THE COURT: If there were a trial, you would have the
6 right to see and hear all of the witnesses against you, and
7 your attorney could cross-examine them. You would have a right
8 to have your attorney object to the government's evidence and
9 offer evidence on your behalf, if you so desired. And you
10 would have the right to have subpoenas issued or other
11 compulsory process used to compel witnesses to testify in your
12 defense. And you would not be required to testify.

13 Do you understand all of that?

14 THE DEFENDANT: Yes, your Honor. I do.

15 THE COURT: Mr. Castro, if there were a trial, you
16 would have the right to testify if you wanted to, but no one
17 could force you to testify if you didn't want to. And,
18 furthermore, no inference or suggestion of guilt could be drawn
19 if you chose not to testify at trial.

20 Do you understand that?

21 THE DEFENDANT: Yes, I do, your Honor.

22 THE COURT: Mr. Castro, do you understand each and
23 every one of the rights that I've described to you?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: Do you have any questions about any of

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1 those rights?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Do you understand that by entering a plea
4 of guilty today, you are giving up each and every one of those
5 rights, that you are waiving those rights, and that you will
6 have no trial?

7 THE DEFENDANT: Yes, I do, your Honor.

8 THE COURT: Do you understand that you can change your
9 mind right now and refuse to enter a plea of guilty? You don't
10 have to enter this plea if you don't want to for any reason at
11 all. Do you understand that completely?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: Now, Mr. Castro, you've received a copy of
14 the Superseding Indictment against you, is that correct?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you read it?

17 THE DEFENDANT: Yes, I have.

18 THE COURT: Have you discussed it with your lawyer?

19 THE DEFENDANT: Yes, I have.

20 THE COURT: Do you understand what you are charged
21 with in the Superseding Indictment?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Do you want me to -- actually, I'm going
24 to read the Superseding Indictment aloud to you in open court,
25 in any event, because I want to assure myself that you

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1 understand what you are charged with in the Superseding
2 Indictment and what the government would be required to prove
3 beyond a reasonable doubt.

4 The Superseding Indictment is the United States of
5 America against Harry Castro, James Halsey IV, John Cantwell,
6 the defendants:

7 "Count One

8 "The Grand Jury charges:

9 "From at least in or about 2012 up to and including in
10 or about February 2013, in the Southern District of New York
11 and elsewhere, Harry Castro, James Halsey IV and John Cantwell,
12 the defendants, and others known and unknown, intentionally and
13 knowingly did combine, conspire, confederate and agree together
14 and with each other to violate the narcotics laws of the United
15 States.

16 "It was a part and an object of the conspiracy that
17 Harry Castro, James Halsey IV and John Cantwell, the
18 defendants, and others known and unknown, would and did
19 distribute and possess with intent to distribute a controlled
20 substance, in violation of Title 21, United States Code,
21 Section 841(a)(1).

22 "The controlled substance involved in the offense was
23 50 grams and more of methamphetamine, its salts, isomers, and
24 salts of its isomers, in violation of Title 21, United States
25 Code, Section 841(b)(1)(A), in violation of Title 21, United

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1 States Code, Section 846."

2 And then there is a forfeiture allegation.

3 "As a result of committing the offense charged in
4 Count One of this Indictment, Harry Castro, James Halsey IV and
5 John Cantwell, the defendants, shall forfeit to the United
6 States, pursuant to Title 21, United States Code, Section 853,
7 any and all property constituting or derived from any proceeds
8 the defendants obtained directly or indirectly as a result of
9 the offense and any and all property used or intended to be
10 used in any manner or part to commit and to facilitate the
11 commission of the offense charged in Count One of this
12 Indictment.

13 "Substitute Assets Provision

14 "If any of the above-described forfeitable property,
15 as a result of any act or omission of Harry Castro, James
16 Halsey IV and John Cantwell, the defendants:

17 "a. cannot be located upon the exercise of due
18 diligence;

19 "b. has been transferred or sold to, or deposited
20 with, a third person;

21 "c. has been placed beyond the jurisdiction of the
22 Court;

23 "d. has been substantially diminished in value; or

24 "e. has been commingled with other property which
25 cannot be subdivided without difficulty,

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1 "it is the intent of the United States, pursuant to 21
2 U.S.C. Section 853(p), to seek forfeiture of any other property
3 of the defendants up to the value of the above forfeitable
4 property.

5 "(Title 21, United States Code, Section 853.)"

6 The Superseding Indictment is signed by the Foreperson
7 and Preet Bharara, the United States Attorney.

8 So, do you understand, Mr. Castro, that is what you
9 are charged with in the Superseding Indictment?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: OK. Do you understand that if you did not
12 plead guilty, the government would be required to prove each
13 and every part or element of the charge against you beyond a
14 reasonable doubt at trial?

15 THE DEFENDANT: Yes, I do understand that.

16 THE COURT: Do you understand that at trial, the
17 government would be required to prove beyond a reasonable
18 doubt, first, the existence of the conspiracy charged in the
19 indictment, that is, an agreement or understanding to violate
20 those provisions of the law that make it illegal to distribute
21 narcotics or possess narcotics with the intent to distribute
22 them; second, that you, the defendant, knowingly became a
23 member of the conspiracy, that is, that you knowingly
24 associated yourself with the conspiracy and participated in the
25 conspiracy to distribute or possess with the intent to

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1 distribute narcotics; and, finally, that the narcotics involved
2 in the conspiracy was methamphetamine? Do you understand that
3 the government would be required to prove all of that beyond a
4 reasonable doubt at trial?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: And in describing to you the elements of
7 the offense, I have taken into account that you are pleading
8 guilty to a lesser included offense than the one that is
9 actually charged in the Indictment. So in listing the elements
10 of the offense, I have listed that the narcotics involved in
11 the conspiracy was methamphetamine rather than any specific
12 amount of methamphetamine, because that's a lesser included
13 charge than the one that's actually in the Indictment, which
14 alleges that the narcotics involved in the conspiracy was
15 50 grams or more of methamphetamine.

16 So to prove the lesser included offense, the
17 government would be required to prove beyond a reasonable doubt
18 at trial only that the narcotics involved in the conspiracy was
19 methamphetamine.

20 Do you understand that?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: Do you understand?

23 THE DEFENDANT: Yes, I do, your Honor. Yes.

24 THE COURT: OK. Now, with respect to the lesser
25 included offense, to which the parties advise you are pleading

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1 guilty, do you understand that the maximum term of imprisonment
2 is 20 years' imprisonment, a maximum term of lifetime
3 supervised release, and a mandatory minimum term of three
4 years' supervised release, a fine of the greatest of \$1 million
5 or twice the gross pecuniary gain derived from the offense or
6 twice the gross pecuniary loss to persons other than yourself
7 as a result of the offense, and a \$100 mandatory special
8 assessment? Do you understand that is the maximum penalty for
9 the crime to which you are entering a plea of guilty as well as
10 the mandatory minimum term of supervised release?

11 THE DEFENDANT: Yes, I do, your Honor.

12 THE COURT: Do you also understand that when I talk
13 about "supervised release," supervised release means that you
14 will be subject to monitoring when you are released from prison
15 and that the monitoring is to be under terms and conditions
16 which could lead to reimprisonment without a jury trial if you
17 violate them?

18 THE DEFENDANT: Yes. Yes, your Honor.

19 THE COURT: And do you understand that if you violated
20 the terms of supervised release and were sentenced to prison,
21 you could be sentenced to prison for the entire term of
22 supervised release without any credit for any time you had
23 already spent on supervised release?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you also understand that as part of

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1 your sentence, I can also order restitution to any person
2 injured as a result of your criminal conduct?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: In reading the Indictment to you, I read
5 the forfeiture allegation in the Indictment. So do you
6 understand that as part of your sentence I can also order
7 forfeiture?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Mr. Castro, do you understand that if I
10 accept your guilty plea and adjudge you guilty, that
11 adjudication may deprive you of valuable civil rights such as
12 the right to vote, the right to hold public office, the right
13 to serve on a jury, and the right to possess any kind of
14 firearm?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: Now, Mr. Castro, under current law there
17 are Sentencing Guidelines that judges must consult in
18 determining your sentence. You have spoken to your lawyer
19 about the Sentencing Guidelines, haven't you?

20 THE DEFENDANT: Yes, I have.

21 THE COURT: Do you understand that I, as the
22 sentencing Court, will not be able to determine your guideline
23 sentencing range until the Probation Department has completed a
24 presentence report and after you and your lawyer and the
25 government have had an opportunity to review that report, to

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1 challenge anything contained in the report, and then to speak
2 on your behalf -- well and after you, your lawyer and the
3 government have had an opportunity to file any objections to
4 the presentence report and after I have had an opportunity to
5 consider those objections? Do you understand that?

6 THE DEFENDANT: Yes, I do, your Honor.

7 THE COURT: And do you also understand that even after
8 it is determined what the basic guideline sentencing range is
9 that applies in your case, I have the authority in some
10 circumstances to depart upward or downward from the sentence
11 that is otherwise called for by the guidelines? Do you
12 understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And even after that guidelines' sentencing
15 range is determined, taking into account any upward or downward
16 departures, I must then look to various statutory factors to
17 make a final determination of what the appropriate and
18 reasonable sentence is in your case.

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you also understand that if you are
22 sentenced to prison, parole has been abolished and you will not
23 be released any earlier on parole?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that if your lawyer or

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1 anyone else has attempted to estimate or predict what your
2 sentence will be, that their estimate or prediction could be
3 wrong?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: No one, Mr. Castro -- not your lawyer, not
6 the government -- no one can or should give you any assurance
7 of what your sentence will be since that sentence can only be
8 determined after the Probation Department has completed the
9 presentence report, after I have ruled on any challenges to the
10 report, and after I have determined what the appropriate and
11 reasonable sentence is in your case.

12 Do you understand that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: And do you also understand that even if
15 your sentence is different from what your lawyer or anyone else
16 told you that it might be, or if it's different from what you
17 expect it to be, you will still be bound by your guilty plea
18 and you will not be allowed to withdraw your plea of guilty?
19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Now, Mr. Castro, I have been given the
22 plea agreement, which you heard me talk about at the outset
23 with your lawyer. It is a November 26, 2013 letter to
24 Ms. Cross-Goldenberg from the government, which appears to be
25 signed by you and Ms. Cross-Goldenberg today, December the 4th.

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1 It's marked as Court Exhibit 1.

2 Have you signed this plea agreement?

3 THE DEFENDANT: Yes, I have.

4 THE COURT: Did you read the agreement before you
5 signed it?

6 THE DEFENDANT: Yes, I did.

7 THE COURT: Did you discuss it with your lawyer before
8 you signed it?

9 THE DEFENDANT: Yes, I did.

10 THE COURT: Did you fully understand the agreement
11 before you signed it?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: Does this letter agreement constitute your
14 complete and total understanding of the entire agreement
15 between the government, your lawyer, and you?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Is everything that you understand about
18 your plea and your sentence contained in this plea agreement?

19 THE DEFENDANT: Yes.

20 THE COURT: Has anything been left out?

21 THE DEFENDANT: Not to my knowledge, no.

22 THE COURT: Has anyone offered you any inducements or
23 threatened you or forced you to plead guilty or to enter into
24 this plea agreement?

25 THE DEFENDANT: No.

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1 THE COURT: There is a provision of the plea agreement
2 that provides: It is agreed that the defendant will not file a
3 direct appeal nor bring a collateral challenge, including, but
4 not limited to, an application under Title 28, United States
5 Code, Section 2255 and/or Section 2241, nor seek a sentence
6 modification pursuant to Title 18, United States Code, Section
7 3582(c) of any sentence within or below the stipulated
8 guidelines' range of 37 to 46 months' imprisonment even if the
9 Court denies the defendant's application for safety valve
10 relief.

11 So do you understand, Mr. Castro, that if I sentence
12 you to 46 months' imprisonment, or less, you had given up your
13 right to appeal or otherwise challenge any such sentence in any
14 proceeding, including any habeas corpus proceeding? Do you
15 understand that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Do you also understand that the Court is
18 not bound by the plea agreement or by any of the provisions or
19 stipulations in the plea agreement? Do you understand that?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Do you understand that the Court must make
22 an independent determination of the appropriate sentence in
23 your case, and even if that sentence differs from anything
24 that's contained in the plea agreement, you will still be bound
25 by your guilty plea and you will not be allowed to withdraw

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1 your plea of guilty? Do you understand that?

2 THE DEFENDANT: Yes. Yes, your Honor.

3 THE COURT: Ms. Cross-Goldenberg, do you know of any
4 valid defense that would prevail at the trial of Mr. Castro?

5 MS. CROSS-GOLDENBERG: No, your Honor.

6 THE COURT: Do you know of any reason that Mr. Castro
7 should not be permitted to plead guilty?

8 MS. CROSS-GOLDENBERG: No, your Honor.

9 THE COURT: Mr. Castro, tell me what you did in
10 connection with the offense to which you are entering a plea of
11 guilty.

12 THE DEFENDANT: In February of 2013, I agreed with
13 others to sell methamphetamine.

14 I know it was wrong and I -- I am advised that it was
15 wrong, and I am very sorry for that.

16 THE COURT: All right. Did you do any act or, to your
17 knowledge, did any of your co-conspirators do any act in
18 Manhattan or the Bronx or Westchester to further the conspiracy
19 to sell methamphetamine?

20 THE DEFENDANT: To my knowledge, just in Manhattan.

21 THE COURT: You did something in Manhattan?

22 THE DEFENDANT: It was in Manhattan, correct, your
23 Honor.

24 THE COURT: OK. What did you do in Manhattan?

25 THE DEFENDANT: Well, I agreed to sell methamphetamine

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1 with others.

2 THE COURT: You entered into the agreement in
3 Manhattan?

4 THE DEFENDANT: Correct, your Honor.

5 THE COURT: OK. And when you did these acts, did you
6 know that what you were doing was wrong and illegal?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: You can talk to your lawyer. Do you have
9 any question about that?

10 THE DEFENDANT: No, I don't.

11 THE COURT: So when you did these acts, did you know
12 that what you were doing was wrong and illegal?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: OK. Does the government want me to ask
15 any other questions of the defendant?

16 MR. WILLIAMS: No, your Honor.

17 THE COURT: OK. Tell me what the government's
18 evidence would be at trial.

19 MR. WILLIAMS: Your Honor, the government would offer
20 both law enforcement and testimony from a confidential
21 informant, among others, about the events that led to the
22 arrest back in February of 2013. Furthermore, there is
23 physical evidence of drug trafficking, including scales and
24 methamphetamine that was seized on the day of the arrest and
25 subsequent to the arrest.

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1 THE COURT: OK.

2 MR. WILLIAMS: And that would prove beyond a
3 reasonable doubt that the crimes charged in the Indictment were
4 in fact committed.

5 THE COURT: By this defendant?

6 MR. WILLIAMS: Correct, your Honor.

7 THE COURT: OK. Mr. Castro, how do you plead to the
8 charge against you in Count One of the Superseding Indictment,
9 guilty or not guilty?

10 THE DEFENDANT: Guilty.

11 THE COURT: Are you pleading guilty because you are in
12 fact guilty?

13 THE DEFENDANT: Yes, I am.

14 THE COURT: Are you pleading guilty voluntarily and of
15 your own free will?

16 THE DEFENDANT: Yes, I am.

17 THE COURT: Before I finally accept the defendant's
18 plea, Ms. Cross-Goldenberg, do you want me to ask any other
19 questions of the defendant?

20 MS. CROSS-GOLDENBERG: No, your Honor. Thank you.

21 THE COURT: Do you know of any reason that I should
22 not accept his plea?

23 MS. CROSS-GOLDENBERG: No, your Honor.

24 THE COURT: Mr. Williams, before I finally accept the
25 defendant's plea, does the government want me to ask any other

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1 questions of the defendant?

2 MR. WILLIAMS: No, your Honor.

3 THE COURT: Does the government know of any reason
4 that I should not accept his plea?

5 MR. WILLIAMS: No, your Honor.

6 THE COURT: All right. Mr. Castro, because you
7 acknowledge that you are guilty as charged in Count One of the
8 Superseding Indictment, because I find that you know your
9 rights and are waiving them knowingly and voluntarily, because
10 I find that your plea is entered knowingly and voluntarily and
11 is supported by an independent basis in fact containing each of
12 the essential elements of the offense, I accept your guilty
13 plea, and I adjudge you guilty of the offense to which you have
14 pleaded.

15 Mr. Castro, the Probation Department will now prepare
16 the presentence report to assist me in sentencing you. You
17 will be interviewed by the Probation Department. It is very
18 important that the information you provide to the Probation
19 Department be truthful and accurate. The presentence report is
20 very important to me in my decision as to what your sentence
21 will be. You and your lawyer will have the opportunity to
22 review the presentence report, to challenge anything contained
23 in the report, and then to speak on your behalf at sentencing.

24 THE CLERK: March 14, 10 o'clock.

25 THE COURT: How about March 14th at 10 a.m.?

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1 MR. WILLIAMS: That is fine for the government, your
2 Honor.

3 MS. CROSS-GOLDENBERG: That's fine with us, your
4 Honor. Thank you.

5 THE COURT: OK. Sentencing March 14th, 2014, at
6 10 a.m.

7 What is the bail status of the defendant?

8 MR. WILLIAMS: I'm sorry, your Honor?

9 THE COURT: What is the bail status of the defendant?

10 MR. WILLIAMS: The defendant is on bail, your Honor.

11 MS. CROSS-GOLDENBERG: He was released, your Honor, on
12 a \$10,000 personal recognizance bond cosigned by one of his
13 brothers. I have a copy of the bond if the Court wants to see
14 it.

15 He has been fully complying with all of his bail
16 conditions since his release in February, and we would ask that
17 they continue.

18 THE COURT: OK. Any other applications with respect
19 to bail?

20 MR. WILLIAMS: Not from the government.

21 THE COURT: Isn't this --

22 MR. WILLIAMS: I don't know if it is presumptively
23 mandatory --

24 THE COURT: I'm sorry?

25 MR. WILLIAMS: I don't know if remand is presumptively

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1 mandatory.

2 THE COURT: You don't?

3 MS. CROSS-GOLDENBERG: Your Honor, in light of the
4 whole -- even if the government were seeking remand, I think
5 there are exceptional circumstances here.

6 THE COURT: Yes. OK. First.

7 (Pause)

8 OK. The government is not seeking remand.

9 Is it a mandatory case? Yes, it appears to be a
10 mandatory case. The offense is under the Controlled Substances
11 Act. The sentence -- the maximum term of imprisonment is ten
12 years or more.

13 Is there a safety valve? Yes, for exceptional
14 circumstances.

15 The parties should certainly have addressed this prior
16 to the entry of the guilty plea.

17 I make it a practice that, you know, if a defendant
18 should -- a defendant should not be unadvised of what the
19 statute provides, and the government should give the advice,
20 counsel should give the advice, and the Court has an obligation
21 to follow the statute not only in those cases where the
22 government wants to remand but the government should be
23 following a policy that it follows the statute, and so it
24 should be not selecting among defendants but, rather, following
25 the statute. And I had thought that had become the government

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1 policy after issues developed over the selective use of that
2 provision. And the Court of Appeals has plainly said, you
3 know, that exceptional circumstances are limited.

4 Now, based on this case, this may be a case of
5 exceptional circumstances based on the defendant's physical
6 condition, if nothing else. What would exceptional
7 circumstances be? Exceptional circumstances may include a
8 situation where the Court at the time of sentence may not
9 impose a sentence of imprisonment because if the Court were not
10 to impose a sentence of imprisonment, sending the defendant to
11 prison pending sentence would not be reasonable, and that is
12 plainly an exceptional circumstance if the Court in good faith
13 believes that that's a possibility. But, on the other hand, if
14 it were clear that the defendant were going to be sentenced to
15 prison, then it would be difficult to say that this is a case
16 of exceptional circumstances.

17 My observations, after listening to the defendant and
18 observing the defendant, is there is a possibility, despite the
19 fact that the parties have a plea agreement which says that the
20 there is a guidelines' sentencing range -- not binding on the
21 Court -- which provides for a term of imprisonment. But I'll
22 certainly listen to an argument that this is a case of
23 exceptional circumstances. And, you know, if I thought that
24 there were an insufficient showing of exceptional
25 circumstances, I wouldn't remand a defendant who had no advice

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1 with respect to that before coming into court; I would simply
2 put it over.

3 So, Ms. Cross-Goldenberg.

4 MS. CROSS-GOLDENBERG: Thank you, your Honor.

5 I can address what I think are the exceptional
6 circumstances. I have some materials which have been provided
7 to the government before we came today regarding Mr. Castro's
8 health, and I am happy to go into those as well.

9 THE COURT: Did you anticipate this as an issue, or
10 not? Or don't you want me to ask?

11 MS. CROSS-GOLDENBERG: Your Honor, this is a case
12 where I think that there clearly are exceptional circumstances,
13 and so I am hopeful that the Court will agree with me. And I
14 think, you know, the way that the Court phrased the issue I
15 think is a very good way to look at it. And I think there are
16 two reasons -- two sort of categories of reasons why it is
17 likely that there may not be a jail term imposed in this case
18 at all.

19 The first is the sort of categorical circumstances in
20 which we find ourselves which resulted in this plea agreement
21 to begin with. And I think -- I don't want to speak for
22 Mr. Williams' office, but to the extent that there is a policy
23 of seeking remand at this stage of a case, I think that the
24 Holder memo and the position that the Attorney General has
25 taken with respect to first offenders in nonviolent, smalltime

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1 drug cases and the reasons why imprisonment is not a good
2 policy in those cases, I know that's what led to the plea to
3 the lesser included charge here as a mechanism of relieving
4 this case from the mandatory minimum framework. Right?

5 So I think categorically that is a signal from the
6 Department of Justice that there are cases, despite what the
7 guidelines may recommend, where jail is not appropriate in
8 first-time, you know, low-level, nonviolent drug offenses, and
9 that is the kind of case that we have right now.

10 I think that the statute clearly has not caught up
11 with that, but I think that the signal from the Justice
12 Department and from the Attorney General, it's obviously been
13 an issue that's been brewing for years and certainly first in
14 the crack cocaine realm but sentences have been ameliorated
15 over time, but this really is a sea change that constitutes an
16 exceptional circumstance and that I think in light of the facts
17 of this case make it likely that a jail sentence will not be
18 imposed.

19 And I'm not presuming what the Court will do, and I
20 don't mean to speak for your Honor, but I think the Court used
21 the word "reasonable," right? That it's, I think, reasonable
22 on these facts to think that there may be a non-jail sentence
23 thereby making remand at this stage unreasonable.

24 So that is the sort of general point with respect to
25 this kind of case and this kind of plea agreement.

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1 With respect to Mr. Castro in particular, your Honor,
2 he mentioned to the Court some of his health conditions. And
3 I'm going to run through some things, and if the Court wants
4 documentation, then I would ask that we put it off and come
5 back --

6 THE COURT: No. I'll accept your representations.

7 MS. CROSS-GOLDENBERG: The first, your Honor, is
8 Mr. Castro's AIDS. He has been sort of up and down in his T
9 cell count and his fight against the illness. Just last month
10 his doctors told him that his blood count has dipped below the
11 sort of threshold between HIV and AIDS, and he has been getting
12 progressively worse I think in large part due to the stress of
13 this case. But I don't have those results from November. But
14 his doctors did tell him that recently.

15 Although I have a list of his medications, I don't
16 have his current dosages and actual treatment regimen with me,
17 so I think remanding him without all of that detail I think
18 would actually put his health in grave jeopardy. Even though I
19 note the BOP's position would be we can treat inmates with
20 AIDS, I still think it would be detrimental to his health at
21 this stage without any planning by his doctors in terms of that
22 treatment.

23 THE COURT: By the way, I misspoke earlier. In
24 describing defendant's condition, I thought he said ADD rather
25 than AIDS.

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1 MS. CROSS-GOLDENBERG: He said both, your Honor. He
2 has -- when he listed his sort of mental health issues, he told
3 you about his depression, his anxiety, his ADD. That's all
4 sort of factored in.

5 But he also -- and I think the fourth, fifth and sixth
6 medications that I read are his -- those are his HIV/AIDS
7 treatments.

8 The more unique issue and in some ways I think the
9 more pressing issue for why imprisonment would be really
10 disastrous in this case has to do with Mr. Castro's prostate
11 issues. He had prostate surgery -- and this is information
12 that I've shared with the government. He had prostate surgery.
13 It was unsuccessful and they sort of, excuse me, to put it
14 simply, botched the surgery.

15 Shortly before his arrest in this case, he underwent
16 sort of a surgery that was designed to repair some of the
17 damage that was done to his prostate, and there was a device
18 implanted near his prostate called a sling, which is sort of
19 what it sounds like. And I have a sort of writeup on it which
20 I can hand up to the Court --

21 THE COURT: No. That's all right. I will take your
22 representation.

23 MS. CROSS-GOLDENBERG: It is designed to sort of
24 support him internally because he was having bladder control
25 issues, leakage, things like that. The sling also

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1 malfunctioned, and when he underwent surgery shortly before his
2 arrest --

3 That was the surgery right before, right?

4 THE DEFENDANT: Yes.

5 MS. CROSS-GOLDENBERG: -- to remove it, it turned out
6 that his own skin actually had grown around this device that
7 was implanted so they couldn't remove it. So now he has this
8 device in him that pulls painfully and uncomfortably and that
9 can't be removed because his own body has sort of grown around
10 it.

11 The issues of incontinence, bladder control, not to
12 mention the pain, all persist. And I think not only would that
13 make the conditions of confinement generally more harsh than
14 will be necessary to achieve the statutory sentencing
15 objectives, I think it also makes him very vulnerable in
16 prison. I mean, in terms of -- you know, his HIV/AIDS alone,
17 but the incontinence and that sort of constant need for medical
18 issues I think really will present a situation where he will be
19 quite vulnerable in prison. And I think, under Section
20 3553(a), that will be a very powerful reason based on his
21 history and characteristics for the Court to vary from the
22 guideline range.

23 Again, I can give the Court more details about it if
24 the Court wants, but those are the two sort of particular to
25 Mr. Castro's health, the two exceptional circumstances that I

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1 think not only will support a nonjail sentence in the end but
2 at this stage of the case counsel against remand and really do
3 make this an exceptional case.

4 And when you combine that with the Attorney General's
5 position and, quite frankly, Mr. Castro's performance on bail,
6 you know, when you think about the regular bail
7 circumstances -- he is not a risk of flight. He doesn't pose a
8 danger to the community. He has several times -- actually, I
9 think, three or four times been granted permission first by a
10 magistrate judge and then by this Court to travel to Florida to
11 see his mother, to Boston to see his brother. He actually just
12 got back yesterday, I think. He was in Boston for
13 Thanksgiving. He knew what was coming today, you know, and he
14 has made every court appearance, every appointment in our
15 office.

16 So in light of all of those circumstances, I would ask
17 that his bail be continued.

18 THE COURT: OK. Mr. Williams, does the government
19 want to be heard on it?

20 MR. WILLIAMS: Your Honor, just very briefly.

21 I will say that Ms. Cross-Goldenberg has been
22 throughout this case very candid with our office about
23 Mr. Castro's health issues. They have been heavily documented.
24 They have been reviewed by not only myself but my supervisors.
25 So we are very much aware of the problems that she laid out to

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1 the Court, and I can just give the Court assurance that they
2 have all been documented to us as well.

3 This is not a case where a defendant has some medical
4 problems, a case where he has some significant ones. The
5 government has been comfortable with him being on bail.

6 And to the extent the Court is considering not
7 imposing a sentence of imprisonment, the government certainly
8 would not seek remand as a result of that possibility.

9 And just briefly, without getting into the, you know,
10 whether or not any term of imprisonment is deserved here,
11 because that is for a later date, I will point out that
12 Ms. Cross-Goldenberg is correct that Mr. Castro qualified for
13 relief under what's referred to as the Holder memo in light of
14 his conduct in this case, and, in addition to his conduct that
15 has qualified him for Holder relief, his health concerns are a
16 separate and independently significant matter which I think
17 inform the totality of the circumstances when your Honor is
18 considering whether exceptional circumstances exist to excuse
19 remand at this point.

20 THE COURT: OK. Well, I appreciate your being
21 forthcoming, Mr. Williams, with the government's position.

22 And there is a more than adequate showing of
23 exceptional circumstances that I will not remand the defendant.
24 The defendant is not a risk of flight or a danger to the
25 community and there are exceptional circumstances.

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1 So sentencing is fixed for March the 14th at 10 a.m.

2 We have to give more time because the defendant is on
3 bail. So sentence is April 18th at 10 a.m.

4 MS. CROSS-GOLDENBERG: My calendar only goes to March
5 but I think April 18th sounds good to me. Thank you, your
6 Honor.

7 THE COURT: OK. If there is a problem, please let me
8 know and we can adjust the date.

9 I'd ask for defense submissions at least 14 days
10 before sentence and government submission at least eight days
11 before sentence. All right?

12 MR. WILLIAMS: Yes. Of course, your Honor.

13 MS. CROSS-GOLDENBERG: Yes, your Honor.

14 And I will provide the Court with the documentation
15 that we had provided the government.

16 THE COURT: OK. Please make sure to get it to me, you
17 know, 14 days before sentence and eight days so that I have an
18 opportunity to consider all of that. All right.

19 MS. CROSS-GOLDENBERG: Thank you, your Honor.

20 MR. WILLIAMS: Thank you.

21 THE COURT: Good afternoon, all.

22 MS. CROSS-GOLDENBERG: Thank you, your Honor.

23 THE COURT: Oh, I am returning Court Exhibit 1 to the
24 government. Thank you.

25 - - -